

## Senators Kerry and Lieberman Unveil the American Power Act

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On May 12, 2010, Sens. John Kerry (D-Mass.) and Joseph Lieberman (I-Conn.) introduced the “American Power Act” (the APA or Act), designed in their words to reduce the nation’s greenhouse gas (GHG) emissions while “transforming our economy, setting us on the path toward energy independence and improving the quality of the air we breathe.” The Act would regulate GHG emissions through implementation of the country’s first nationwide cap and trade program and establishes a host of new, related environmental and energy programs. Significantly, the Act also seeks to spur the development of nuclear and renewable energy sources, advance clean transportation and promote the deployment of carbon capture and sequestration (CCS). In addition, the APA authorizes revenue sharing from offshore oil and gas in areas that previously had been withdrawn from leasing. Finally, the APA addresses a range of international climate change priorities, including reduction of GHG emissions from deforestation in developing countries and adaptation measures.

The APA is only the latest in a series of major climate proposals in the 111th Congress, but offers a timely glimpse into the current positions of several constituencies critical to forging long-sought consensus and will fuel a lively debate ahead of the mid-term election cycle. The Kerry-Lieberman bill should be read against the backdrop of other legislative touchstones, especially the American Clean Energy and Security Act (ACES), introduced by Reps. Henry Waxman (D-Calif.) and Edward Markey (D-Mass.) and passed by the House in June of 2009, and the Clean Energy Jobs and American Power Act (CEJAPA), introduced later in 2009 by Kerry along with Sen. Barbara Boxer (D-Calif.). A side-by-side comparison of the APA and ACES is provided in the appendix on page 10. In general, the APA’s cap and trade program differs surprisingly little from its predecessors. Yet contrasts can be drawn in some of the nuances, for example, its allotment of allowances (or failure to do so) in certain areas. It remains to be seen whether inclusion of significant measures to expand nuclear power and offshore oil and gas production will meaningfully improve prospects for consensus. An overview of key APA provisions follows, with emphasis on selected elements of the cap and trade program under the Act.

### Establishment of the Cap

The Act would regulate GHG emissions primarily by amending the Clean Air Act (CAA) to add a Title VII, establishing the Greenhouse Gas Pollution Reduction and Investment program. This new program would install a cap and trade regime on emissions of GHGs from roughly 85 percent of the

United States economy. The Act would establish a total number of emission allowances to be made available each calendar year to entities that are covered under the cap. Significantly, the Act covers “downstream” sources such as electricity generators and industrial stationary sources emitting more than 25,000 tons of carbon dioxide or the equivalent amount of other GHGs (CO<sub>2</sub>e) per year. In some instances, when it is impractical to regulate the actual emitter, the Act moves “upstream” to cover fuel producers and importers, GHG producers and importers, and natural gas local distribution companies. Beginning in 2014, covered entities would be required to submit one allowance to the U.S. Environmental Protection Agency (EPA) for each ton of CO<sub>2</sub>e emitted by them or attributable to them in the previous calendar year. The number of emission allowances ratchets down thereafter, thereby driving GHG emissions down over an extended time horizon: 4.75 percent below 2005 levels by 2013; 17 percent below 2005 levels by 2020; 42 percent below 2005 levels by 2030; and 83 percent below 2005 levels by 2050.

### **Distribution of Emission Allowances**

During the initial years of the cap and trade regime, just over 25 percent of the allowances in a given year will be sold at auction. Auction proceeds are earmarked for providing low-income energy consumers with refunds, for promoting transportation efficiency and infrastructure, and for deficit reduction. Additionally, just under 14 percent of allowances are allocated to various clean energy and climate change programs. Thus, the Act contemplates that during the initial years of the cap, approximately 40 percent of the allowances created for a given year will be purchased by capped entities, either via auction or on the open market, in order to satisfy their compliance obligations. The remainder, roughly 60 percent of allowances, are to be distributed to covered entities at no charge. This is a slightly smaller percentage than the percentage of free distributions provided under ACES and the CEJAPA. The free distribution phases out by 2030; by 2035 100 percent of the allowances are to be auctioned, with proceeds dedicated to deficit reduction and providing refunds to energy consumers. The allocation of allowances to free distribution is described below.

### **Partial Offset of Energy Price Increases**

The Act distributes freely to the electricity sector 51 percent of the allowances created for the years 2013 through 2015, and 35 percent of the allowances for the years 2016 through 2025, before phasing out over a five-year period from 2026 through 2030. Local electric distribution companies (LEDCs) would receive no less than 85.7 percent of the emission allowances allocated to the electricity sector for a given year. Of the total allotment to LEDCs, 75 percent would be distributed to individual LEDCs ratably based on annual average GHG emissions during a baseline period. The remaining 25 percent of the allowances allocated to LEDCs would be distributed to individual LEDCs ratably based on annual average retail electricity deliveries during a baseline period. This methodology for determining the amount of allowances distributed to individual LEDCs represents a departure from ACES and the CEJAPA, both of which employ a methodology that gives equal weight to historical GHG emissions and retail electricity deliveries. By placing emphasis on past GHG emissions, the APA would provide a more favorable allowance distribution to carbon-intensive utilities than its predecessors. Allowances distributed to LEDCs may be used only for the benefit of retail ratepayers.

Merchant coal generators and long-term contract generators (small or independent power producers with electricity sales contracts that do not allow them to recover the costs of compliance) would collectively receive the lesser of 14.3 percent of the emission allowances allocated to the electricity

sector for a given year, or 105 percent of the amount of emission allowances that the EPA anticipates would be distributed to these entities pursuant to a formula based on electricity produced and GHG emissions over a baseline period. In either event, the amount of allowances that may be distributed to long-term contract generators is capped at 4.3 percent of the emission allowances allocated to the electricity sector for a given year.

Individual merchant coal generators would receive an allotment of allowances equal to one-half of their qualifying emissions, defined as the megawatt hours of electricity produced from coal in a given year multiplied by the facility's average GHG emissions per megawatt hour during a baseline period. This allocation is also subject to a phase-down factor, which reduces each generator's allocation each year at the same rate as the reduction in the size of the cap. Individual long-term contract generators would receive emission allowances based on the amount of CO<sub>2</sub>e emitted as a result of qualifying electricity and thermal sales agreements.

The Act allocates 9 percent of the allowances created for the years 2016 through 2025 to regulated natural gas local distribution companies, which also are mandated by the Act to use the allowances to protect consumers from natural gas price increases. These allowances phase out over a five year period from 2026 through 2030. Allowances are to be distributed to individual entities ratably pursuant to a formula based on average retail natural gas deliveries over a baseline period. Home heating oil and propane customers are protected from price increases through an allocation of 1.9 percent of allowances for the years 2013 through 2015 and 1.5 percent for the years 2016 through 2025. This program also phases out by 2030. The allowances are allocated to state programs established to provide rebates or other financial assistance to customers. Allowances would be distributed to the states ratably based on the ratio of the carbon content of home heating oil and propane sold to customers within each state to the total carbon content of such fuels sold to customers in the United States.

### **Transition Assistance for Industry**

Energy-intensive, trade-exposed industries would receive a free allowance distribution of up to 2 percent for the years 2013 through 2015 and 15 percent for the years 2016 through 2025, before phasing out over the years 2026 through 2030. In contrast, ACES and the CEJAPA both allot 15 percent of allowances to industry in 2016, but phase down the allocation beginning in 2017. The Act also allocates 0.5 percent of the allowances for the years 2013 through 2015, up to maximum cumulative allowance value of \$1.55 billion, to facilitate manufacturing plant energy efficiency retrofits and modernization.

Domestic petroleum refiners would receive a free distribution of 4.3 percent of allowances for the years 2013 through 2015 and 3.75 percent for the years 2016 through 2025, before the allocation tapers off by 2030. Producers of transportation fuels and refined petroleum products would not have to bid for allowances at auction or trade for allowances in the open market. Rather, the Act establishes a compliance system for refiners under which the price of carbon is constant across the industry. Under this program, the EPA and Energy Information Agency (EIA) would set aside a number of allowances each quarter sufficient to cover emissions from the industry. At the end of the quarter, each entity would purchase the amount of allowances needed to satisfy its compliance obligation. The price is set at the auction clearing price from the most recent auction of emission allowances. Allowances purchased under this program may not be traded, sold, banked or borrowed.

## **Carbon Capture and Sequestration**

The Act establishes a two-pronged strategy for promoting the development and deployment of CCS. The first prong, contingent upon receipt of approval from the state regulatory authorities of at least 30 states, would consist of the creation of a program funded through assessments on utilities for fossil fuel-based electricity sold to consumers (for which the utilities would be permitted to recover through rate increases). The program would provide grant funding to support commercial-scale demonstrations of CCS projects, including capture and conversion projects, that utilize technologies that are capable of advancing to commercial readiness. Projects under 100 MW would not be eligible for funding. This program would begin within a year of enactment and last for 15 years.

Under the second prong, the Act allocates allowances to support commercial development of CCS technologies in electric power generation and industrial operations. The APA allocates 0.8 percent of allowances to this program beginning in 2017, with that number increasing progressively to 10 percent by the year 2030 before phasing out in 2034. This allocation to support CCS deployment in the APA is more front-loaded than those of ACES or the CEJAPA. In order to qualify for allowances, the owner of a project must have implemented a CCS technology, including capture and conversion, that achieves at least a 50 percent reduction in CO<sub>2</sub> emissions. For electricity generators, allowances would be distributed based on the tons of CO<sub>2</sub> emissions avoided, multiplied by a bonus based on rate of capture and divided by the market value of allowances. Bonus values range from \$50 per ton for 50 percent capture to as high as \$96 per ton for 90 percent capture. CCS projects sequestering in geologic formations for the purpose of enhanced oil recovery will receive a reduced bonus to reflect the lower net cost of the project. After 20 gigawatts of treated generating capacity is reached, allowances under this program will be distributed via reverse auction. The Act directs the EPA to issue regulations governing the distribution of allowances to industrial sources and stipulates that distributions to industrial sources may not exceed 15 percent of the allowances allocated to this program.

### **Allowance Allocations for Other Priority Areas**

The Act allocates 2.5 percent of allowances for the years 2013 through 2015, declining progressively to 0.5 percent by 2021, to promote renewable energy and energy efficiency technologies. An additional 2 percent of allowances for the years 2013 through 2021 are allocated to clean energy technology research and development programs. In contrast, ACES and the CEJAPA both allocate approximately 10 percent of allowances to these types of programs in the early years, and extend funding, in the form of approximately 4 percent of allowances per year, to these programs through 2050. The APA also allocates 1 percent of the allowances for the years 2013 through 2015 to a program designed to reward early actors, including states that have implemented cap and trade programs, for their efforts to reduce GHG emissions. Significantly, unlike ACES or the CEJAPA, the APA does not allocate allowances to programs supporting reduced emissions from deforestation and degradation (REDD). While the APA does establish such a program, described in greater detail below, it is to be funded through appropriations, whereas under ACES and the CEJAPA the REDD program is allocated 5 percent of allowances through the year 2025.

## Alternative Compliance with the Cap

The APA provides for several different alternative methods for covered entities to comply with the cap. These alternatives include offset credits issued for domestic and international projects that result in verified reductions in atmospheric GHG levels and emission allowances issued by qualifying foreign cap and trade programs. In general, these additional compliance options would reduce demand for emission allowances and thus help to reduce the cost of complying with the cap.

### Offset Credits

Covered entities may satisfy a percentage of their compliance obligations by holding offset credits in lieu of an emission allowance. Prior to 2018, both domestic and international offset credits retain the same value as an emission allowance for the purposes of complying with the cap; that is, covered entities may hold one qualifying offset credit per ton of CO<sub>2</sub>e emitted. After 2018, however, the value of an international offset credit is discounted relative to an emission allowance, such that 1.25 offset credits must be held in lieu of an emission allowance. The Act caps the total quantity of offset credits that may be used in a calendar year by all covered entities at 2 billion. The amount of offset credits that may be used by an individual entity to satisfy its compliance obligation in a given year is directly proportional to that entity's percentage of emissions as compared to the emissions of covered entities as a whole. For example, if a covered entity accounted for one percent of the emissions of all covered entities, that entity would be allowed to hold offset credits in lieu of allowances to satisfy its compliance obligations for up to 20 million tons (1 percent of 2 billion tons) of CO<sub>2</sub>e. The amount of this individual tonnage limit for which compliance may be demonstrated using international offset allowances is capped at 25 percent. The EPA may raise the amount of international offsets that may be employed if it finds that domestic offsets are unlikely to offset more than 1.5 billion tons of CO<sub>2</sub>e in any given calendar year, but the total amount of international offset credits that covered entities may collectively use to demonstrate compliance may not exceed 1 billion tons of CO<sub>2</sub>e annually.

### Specific Requirements for International Offset Credits

The APA directs the EPA to promulgate regulations establishing a program for the issuance of international offset credits within two years of enactment. The APA mandates that the EPA issue international offset credits only if the following three requirements are satisfied: (1) the United States is a party to an agreement or arrangement that includes the country in which the project occurs; (2) the country is a developing country and (3) the terms of the agreement or arrangement comply with the Act's requirements for issuance and distribution of offset credits and provide for the project representative to be eligible to receive service of process in the United States.

The EPA is charged with developing a list of project types that are eligible to generate offset credits. The Act contemplates three primary categories of international offset credits. The first, sector-based credits, are appropriate for activities within sectors that would be subject to the cap in the United States, and occur in host countries that have comparatively high GHG emissions or comparatively greater levels of economic development. In such instances the EPA may determine that offset credits only will be issued for projects that result in GHG reductions measured by a reduction in emissions relative to that project's economic sector. The Act also authorizes the EPA to issue international offset credits in exchange for comparable instruments issued by an international body established under the United Nations Framework Convention on Climate Change. Finally, the Act provides for the issuance of offset credits for GHG reductions accomplished through deforestation

reduction programs. Offsets only will be issued for projects taking place in qualifying countries, with the quantity of offsets determined by comparing national emissions from deforestation to a national baseline. The reduction in emissions from deforestation must have occurred prior to the issuance of the offset credit and been demonstrated using accepted methodologies. Activities aimed at reducing deforestation to generate offset credits must be managed in accordance with extensive environmental and cultural considerations, such as maintaining biodiversity, restoring native species, and giving due regard to the rights and interests of local communities and indigenous peoples.

### **International Emission Allowances**

Covered entities may hold an international emission allowance in lieu of a domestically issued emission allowance, subject to several conditions. The international program that issued the allowances must be run by a national or supranational foreign government, impose a mandatory absolute tonnage cap on GHG emissions and be at least as stringent as that established by the Act. The holder of the international allowance must certify that the allowance has not been used for compliance purposes in any other GHG regulatory program. The EPA may modify the percentage, currently unlimited, of a covered entity's compliance obligations that may be satisfied by holding international emission allowances.

### **Additional Cost-Containment Mechanisms**

In addition to providing for alternative methods of compliance, the APA allows for several other means of containing compliance costs, as described briefly below. These include providing covered entities additional flexibility by allowing for the banking and borrowing of allowances and establishing a special "cost-containment" reserve of allowances that would be sold annually at a set price, thus allowing covered entities to purchase a fixed amount of allowances at prices not affected by market demand.

#### **Banking and Borrowing**

Covered entities may bank an unlimited amount of unused emission allowances for use in future years. The Act also provides for the borrowing of allowances issued for a future year to satisfy compliance obligations in the current calendar year. Covered entities may borrow, without interest, an unlimited amount of allowances from their allotment for the next vintage year. Covered entities also may satisfy up to 15 percent of their compliance obligation by borrowing, with interest, emission allowances with vintage years two to six years from the year for which they are satisfying their compliance obligation. As interest, the borrower must hold for retirement at the time it borrows the allowance a quantity of emission allowances equal to 8 percent of the number of years between the calendar year in which the allowance is being used and the vintage year of the allowance that is being borrowed. Thus, a covered entity that borrows one allowance with a vintage year five years from the compliance year actually must submit 1.4 allowances to satisfy the compliance obligation for which the allowance was borrowed.

#### **Cost Containment Reserve**

As an additional cost containment measure, the APA provides for a reserve of emission allowances to be known as the Cost Containment Reserve. The reserve would be filled with 1.5 percent of the allowances established for the years 2013 through 2021, 2.5 percent of the allowances established

for the years 2022 through 2029 and 5 percent of the allowances established for the years 2030 through 2050, for a total of 4 billion tons of emission allowances. The reserve is designed to prevent carbon prices from rising to economically harmful levels by offering for sale to covered entities only a set percentage of allowances at a set price. Allowances in the reserve will be sold each year during the 90-day period preceding that date on which covered entities are required to demonstrate compliance. For 2013 the price is set at \$25. For each year thereafter, the price will increase by 5 percent plus the rate of inflation. If there is demand for allowances at these prices, release of allowances into the market at that price would relieve upward pressure on the price of carbon. However, a covered entity may only satisfy up to 15 percent of its compliance obligation by purchasing allowances from the reserve. If the price of carbon is below the set price, there will be no demand and the allowances will be returned to the reserve. Although, as noted above, the APA does not allocate allowances directly to REDD programs, proceeds from the sale of reserve allowances would be used to purchase and retire international deforestation offset credits. The EPA would create an amount of emission allowances equal to 80 percent of the retired offsets with which to replenish the reserve. Cost Containment Reserve Allowances may not be banked for future use.

### **Regulation of Greenhouse Gas Markets**

The Act bestows authority over the GHG trading markets to the Commodity Futures Trading Commission (CFTC) and amends the Commodity Exchange Act to regulate trading of GHG instruments (consisting of emission allowances, offset credits and derivatives) in the same manner as agricultural commodities. The APA restricts the market for GHG instruments to trading conducted on an exchange and cleared through a designated carbon clearing organization. Short sales and excessive speculation would be prohibited. Participation in this market is restricted to regulated carbon market participants and compliance entities registered with the CFTC. While this restriction does not apply to trades involving “an agreement, contract, or transaction in a GHG instrument that is traded on a designated contract market and does not provide for the physical delivery of the GHG instrument,” the term “regulated carbon market participant” is vaguely defined in Act. The CFTC, in conjunction with the EPA and the Department of Treasury, is given broad license to determine which additional participants beyond compliance entities will be permitted to trade in emission allowances, offset credits and other instruments requiring physical delivery. A restrictive interpretation of this provision by the agencies could severely restrict traders’ access to the market, which has raised concerns about potential adverse impacts on market liquidity.

### **Reducing Deforestation in Developing Countries**

The Act directs the EPA and the U.S. Agency for International Development to establish a program to reduce GHG emissions from deforestation in developing countries. The goal of this program is to achieve emission reductions, additional to those accomplished domestically, of 6 billion tons of CO<sub>2</sub>e by the year 2025. The program aims to build capacity in developing countries to reduce emissions from deforestation and to protect existing forest carbon stocks from any shifts in land use as a result of reduced deforestation in other areas. Activities supported by this program would include national and subnational deforestation activities; activities to measure, monitor and verify deforestation, avoided deforestation and deforestation rates; leakage prevention activities; and development of governance structures to reduce deforestation and illegal logging. Activities supported through this program must be environmentally sound and should protect the rights of indigenous groups and local communities. Eventually, the Act conditions continued support to countries participating in the program on making substantial progress toward adopting and implementing a program to achieve reductions in deforestation measured against a national baseline without significant leakage.

As noted above, the program is not funded with proceeds from the auction of allowances. However, the APA contains a provision that allows the president the option of allocating up to 5 percent of allowances for a given year to climate change programs in developing countries, including REDD programs, in the event that the United States reaches a multilateral climate change reduction agreement covering at least 67 percent of global GHG emissions.

### **Relationship to Preexisting Domestic GHG Regulatory Regimes**

The Act prohibits states or political subdivisions thereof from implementing or enforcing a carbon cap beginning on Jan. 1 of the first calendar year for which the EPA allocates allowances, thus superseding existing and/or emerging GHG cap and trade programs such as the Regional Greenhouse Gas Initiative (RGGI) and the Western Climate Initiative (WCI). To prevent unfair treatment of entities currently subject to state and regional GHG emission caps, the Act directs the EPA to issue regulations providing that an entity that holds emission allowances issued by California, the WCI or RGGI before Dec. 31, 2012, for use in subsequent years may exchange those allowances for allowances established under the Act. The allowances necessary to comply with this provision would be subtracted from the amount generally allocated for auction. Furthermore, as discussed above with regard to the early offset program, the EPA is authorized to issue allowances in exchange for credits meeting certain criteria that were issued under qualifying regulatory or voluntary GHG emission offset programs.

### **Relationship of the Global Warming Pollution Reduction Program to the EPA's Existing Authority Under the Clean Air Act**

The Act amends the CAA to add Title VIII, establishing performance standards for new coal-fired power plants. Under this provision, all coal-fired plants initially permitted after Jan. 1, 2009 must achieve specified reductions in CO<sub>2</sub> emissions by the year 2020. In general, the APA mandates that no other standards of performance may be established for capped sources unless the EPA determines that performance standards are appropriate because of environmental impacts unrelated to climate change. However, there is significant carve out to this general rule; the Act does not preclude the EPA from establishing performance standards under Section 111 of the CAA for coal-fired power plants that were permitted before 2009 and thus not subject to the newly added Title VIII. Furthermore, the EPA retains whatever authority or obligation it currently has pursuant to the existing terms of Section 111 of the CAA to establish performance standards for uncapped stationary sources.

The Act further prohibits the EPA from listing any GHG as a criteria pollutant or hazardous air pollutant on the basis of the gas's effect on climate change or ocean acidification. The Act also states that a facility will not be considered a "major emitting facility" for purposes of the CAA's Prevention of Significant Deterioration (PSD) preconstruction air permit program based on its emissions of GHGs; however, as proposed, the Act does not exclude the imposition of requirements that may be imposed with respect to the emission of GHGs (including a requirement to meet a BACT standard) from a major source that is constructed or modified. With respect to the Title V program, the APA provides that a source shall not be required to obtain a Title V operating permit solely due to its emissions of GHGs, to the extent such gases are regulated only due to their impact on climate change.

## Promotion of Nuclear Power Generation

The Act aims to both reduce the current barriers to the construction and operation of nuclear power facilities and provide incentives for the growth of the domestic nuclear industry. Most notably, the Act would increase loan guarantees for the nuclear industry to \$54 billion under the Innovative Technology Loan Guarantee Program, up from \$18.5 billion, although it also would impose a new loan guarantee retention fee for advanced nuclear facility projects to return funds to the program. Other incentives include expanding the provision of regulatory risk insurance for up to 12 (from six) nuclear reactors at a time, providing a new investment tax credit to promote nuclear facilities, allowing for five-year accelerated depreciation for nuclear facilities and offering tax grants in lieu of tax credits for qualifying nuclear expenses. In addition to these financial incentives, the Act would also invest in research and development of small-scale, modular nuclear reactors, as well as create an expedited licensing process for qualifying new nuclear plants.

## Offshore Oil and Gas

The APA contains significant provisions related to offshore oil and gas production. The APA provides for revenue sharing from oil and gas leases for states located within 300 miles of tracts that were previously withdrawn from leasing. Under this program 37.5 percent of lease and royalty proceeds would be distributed to coastal states, with another 12.5 percent allocated to state and federal land and water conservation programs. While opening up previously off-limits areas to drilling, the APA also provides an opportunity for states to prohibit oil and gas production off of their shores. Specifically, the Act allows a state to pass a law prohibiting oil and gas leasing within 75 miles of its coastline. Upon passage of such a law, the Department of Interior would be obligated to withdraw the area from the applicable five-Year Outer Continental Shelf Oil and Gas Leasing Program. The Act also mandates that environmental impact studies be performed on areas newly opened to leasing. If such a study indicates that a state would be significantly impacted by a spill, the state may pass a law prohibiting oil and gas leasing in the proposed area. Therefore, even if the state declines to pass a general law prohibiting leasing within 75 miles of its coastline, it still has an opportunity to prevent drilling in a specific area contingent on the outcome of the impact study.

## The Road Ahead

Although the odds against passage of major climate legislation in 2010 remain long, the APA illustrates the continuing commitment of key lawmakers and stakeholders to forge a viable consensus. The Act will inform the process going forward and, as it does, expect that the policy conversation will also incorporate ideas from other major proposals, such as the American Clean Energy and Leadership Act, introduced by Sen. Jeff Bingaman (D-N.M.) and reported by the Senate Committee on Energy and Natural Resources last June, key provisions of which include the implementation of a renewable electricity standard, the establishment of a “Green Bank” to facilitate the provisions of financing for clean energy technologies, and modernization of the transmission grid. The recent *Deepwater Horizon* explosion and oil spill also figures to influence the tenor and trajectory of the climate and energy policy debate in ways that are difficult to assess today. Meanwhile, as illustrated by the release of its final “tailoring rule,” the EPA’s efforts to control GHG emissions using the Clean Air Act continue in earnest.

	American Power Act (Kerry-Lieberman)	American Clean Energy and Security Act (Waxman-Markey)
<b>GHG Reductions</b>	4.75% below 2005 levels by 2013; 17% below 2005 levels by 2020; 42% below 2005 levels by 2030 and 83% below 2005 levels by 2050.	3% below 2005 levels by 2012; 17% below 2005 levels by 2020; 42% below 2005 levels by 2030; and 83% below 2005 levels by 2050.
<b>Coverage</b>	Covers approximately 85% of the economy's emissions. Downstream coverage: electricity providers and industrial facilities. Upstream coverage: natural gas LDCs, fuel refiners and producers of GHGs.	Same
<b>Allowance Distribution</b>	Approximately 60% of allowances distributed for free in 2016: 35% to electricity generators; 9% to natural gas LDCs; 15% to industry; 3.75% to refiners and 1.5% to heating oil customers. Approximately 14% distributed to federal and state climate change programs. Roughly 25% auctioned-off initially, auctions open only to covered entities and regulated GHG market participants. Most distributions phase out by 2030. 100% auction by 2035.	Approximately 63% of allowances distributed to covered entities for free in 2016: 35% to electricity generators; 9% to natural gas LDCs; 15% to industry; 1.5% to heating oil customers and 1.75% to CCS. Approximately 22% distributed to federal, state and international climate change programs, including 5% to REDD. 15% auctioned off initially; auctions open to any person. Most free distributions phasing out by 2030. By 2035, 70% auction, 25% sold by climate change programs to covered entities and 5% to CCS.
<b>International Allowances</b>	May be held in lieu of an allowance.	Same
<b>Domestic Offsets</b>	One offset equals one allowance. Total universe of offsets is capped at 2 billion. The percentage of an entity's compliance obligation that may be satisfied with offsets is determined on a <i>pro rata</i> basis.  Does not provide for use of term offsets.	1 offset equals 1 allowance. Total universe of offsets is capped at 2 billion. Covered entities would be able to satisfy 30% of their compliance obligation with offset credits in 2013; 29% in 2020; 35% in 2030; 45 percent in 2040 and 63 percent in 2050.  Allows the USDA to issue term offset credits for agricultural and forestry related offset projects with crediting periods of less than five years.
<b>International Offsets</b>	One international offset equals one allowance until 2018, after which 1.25 international offsets equals one allowance. Usage capped at 25% of total offsets, but cap can rise to 50% if supply of domestic offsets is inadequate.	One international offset equals one allowance until 2018, after which 1.25 international offsets equals one allowance. Usage capped at 50% of total offsets, but cap can rise to 75% if supply of domestic offsets is inadequate.
<b>Allocation of Allowances in Support of CCS</b>	Allocates 0.8% of allowances to CCS beginning in 2017, increasing to 10% by the year 2030. Remains at 10% through 2034 before terminating.	Allocates 1.75% of allowances from 2014 through 2017, increasing to 4.75% for the years 2018 and 2019 and further increasing to 5% for the years 2020 through 2050.
<b>Reduced Emissions from Deforestation and Degradation (REDD)</b>	Establishes REDD program to be funded through appropriations.	Establishes REDD program. Allocates 5% of allowances over the years 2012 through 2025 to REDD program, phasing out by 2030.
<b>Banking and Borrowing</b>	Unlimited banking; unlimited borrowing from one year in future. Up to 15% borrowing from two to six years in future with 8% interest.	Same
<b>Cost Containment</b>	Provides for Cost Containment Reserve, an annual sale of allowances at a set price (\$25 in 2013, escalating annually at CPI plus 5%). Funded with 4 billion tons of emission allowances. Entities may satisfy 15% of their compliance obligation through purchases from the reserve.	Provides for quarterly Strategic Reserve Auctions at a minimum threshold price (\$28 in 2012, increasing at set rate for 2013-2014, then determined by formula). Funded with 2.5 billion tons of emission allowances. For 2012-2016, up to 5% of the cap to be auctioned in Strategic Reserve Auctions. For 2017 and after, amount increases to 10%.
<b>Carbon Market Regulation</b>	CFTC oversees the market, with derivatives to be regulated in the same manner as agricultural commodities. Participation in market limited to covered entities and to "regulated market participants."	FERC regulates cash market for emission allowances, offset credits, etc. while CFTC oversees GHG derivatives market in the same manner as agricultural commodities.
<b>Relationship to Preexisting Domestic Regimes</b>	Supersedes preexisting GHG regulatory programs. To prevent unfair treatment, EPA is directed to establish procedures for exchanging allowances and offsets issued by California, RGGI and WCI for allowances issued under the federal program.	Prohibits states or political subdivisions thereof from implementing or enforcing a carbon cap during the years 2012-2017. To prevent unfair treatment, EPA is directed to establish procedures for exchanging allowances and offsets issued by California, RGGI and WCI for allowances issued under the federal program.
<b>Relationship to EPA's Authority under the Clean Air Act</b>	EPA retains authority to establish minimum standards of performance under Section 111 of the CAA for uncapped stationary sources. Prohibits EPA from regulating capped sources under any other provisions of the CAA, except for regulating coal-fired power plants permitted prior to 2009 under Section 111.	Directs the EPA to establish minimum standards of performance under Section 111 of the CAA for uncapped stationary sources with emissions greater than 10,000 tons of CO <sub>2</sub> e. Prohibits EPA from regulating capped sources under any other provisions of the CAA except for the cap and trade program.
<b>Regulation of HFCs</b>	Regulation of HFCs to be undertaken separately from cap and trade program; HFCs to be phased out to 85% of current levels by 2033.	Same